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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,315	07/09/2001	Q. Peter Zhang	17656 USA	7760

7590

04/11/2002

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EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,315

Applicant(s)

ZHANG ET AL.

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dimensions of the claimed elements must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bono et al. (5224614). Bono teaches a container having body portion with a lateral extent of at least 4 in. (note the diameters of 66 and 67 being 2 inches), and opposed gripping panels being no more than 2 ½ inches.

4. Claims 1, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Krishnakumar et al. (5472105). Krishnakumar teaches a container having body portion with a lateral extent of at least 4 in. (col. 5, lines 50), and opposed gripping panels being no more than 2 ½ inches apart (note $d4 = .9$ in, thus the distance between the two panels being $4 \text{ in.} - 2(.9 \text{ in.}) = 2.2 \text{ in.}$

Regarding claim 17, Krishnakumar teaches a multiplayer container with a PET inner layer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr (D277551) in view of Krishnakumar. Kerr teaches a container having a pair of gripping panels. Kerr meets all claimed limitations except for the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

It would have been obvious to one of ordinary skill in the art to provide the container of Kerr having a lateral extent at least 4 in. and the gripping panels no less than 2.5 in as taught by Krishnakumar to provide the desired dimension of the container and the desired gripping size for holding the container.

With respect to the dimensions of the container and the gripping panels, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the

art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

7. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar in view of Entrup (D385,196). Krishnakumar meets all claimed limitations except for the gripping panels being at the neck portion. Entrup teaches that it is known in the art to provide a container having gripping panels at the neck portion. It would have been obvious to one of ordinary skill in the art to provide a container having gripping panels at the neck portion in Krishnakumar as taught by Entrup to enable one to hold the container at the desired place.

With respect to the dimensions of the container and the gripping panels, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

8. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308,167) in view of Krishnakumar. Kerr teaches a container having a pair of gripping panels at the neck portion. Holmes meets all claimed limitations except for the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in

Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

It would have been obvious to one of ordinary skill in the art to provide the container of Holmes having a lateral extent at least 4 in. and the gripping panels no less than 2.5 in as taught by Krishnakumar to provide the desired dimension of the container and the desired gripping size for holding the container.

With respect to the dimensions of the container and the gripping panels, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai *T. Mai*
Examiner
Art Unit 3727

April 6, 2002